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NOV 4 1964
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

No. 497.
OCTOBER TERM, 1964.

JOHN RUFFALO, JR.,
Petitioner,

vs.

THE MAHONING COUNTY BAR ASSOCIATION,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF OHIO.

BRIEF OF RESPONDENT IN OPPOSITION.

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BRIEF OF RESPONDENT IN OPPOSITION.

Now comes the Mahoning County Bar Association, respondent in the above case, and moves to dismiss the petition for writ of certiorari on the grounds that no jurisdiction attaches for the following reasons:

(A) The three questions presented by petitioner were not timely or properly raised in the state court proceedings;

(B) The three questions presented by petitioner are so unsubstantial as to need no further argument.

REASONS FOR DENIAL OF THE WRIT.

THE THREE QUESTIONS PRESENTED BY PETITIONER WERE NOT TIMELY OR PROPERLY RAISED IN THE STATE COURT PROCEEDINGS.

"QUESTIONS PRESENTED.

1. Does suspension of a lawyer from the practice of law because he has made occasional advances of funds to needy clients in cases under the Federal Employers' Liability Act deny to such lawyer, or the class of clients he represents, rights, privileges, or immunities protected by the Federal Employers' Liability Act or by the Fourteenth Amendment to the Constitution of the United States?

2. Does suspension of a lawyer from the practice of law because he had had in his employ, to assist him in prosecution of cases under the Federal Employers' Liability Act, an investigator who was also employed in a different capacity by a railroad, deny to such lawyer, or the class of clients he represents, rights, privileges, or immunities protected by Section 10 of the Federal Employers' Liability Act or by the Fourteenth Amendment to the Constitution of the United States?

3. Does suspension of a lawyer from the practice of law on the basis of a judicial construction of the canons of ethics which could not fairly have been anticipated deny to such lawyer the right to pursue his calling without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States?"

It is noted that the petition for writ of certiorari makes numerous references to constitutional questions raised in briefs filed with the Board of Commissioners on Grievances and Discipline and the Supreme Court of Ohio. Not only do these references fail to reveal that a Federal question was raised timely, properly, or with precision, but also

this Court has held that briefs are not part of the record for the purpose of raising a Federal question. *Lynch v. N. Y. ex rel. Pierson*, 293 U. S. 52 at 54, 55 S. Ct. 16, 71 L. ed. 191; *Live Oak Association v. Railroad Commission*, 269 U. S. 354 at 357-358, 46 S. Ct. 149, 70 L. ed. 305; *Harding v. Illinois*, 196 U. S. 78 at 84, 25 S. Ct. 176, 49 L. ed. 394.

In *Oxley Stove Co. v. Butler County*, 166 U. S. 648 at 655, 17 S. Ct. 709, 41 L. ed. 1149, this Court held:

> "* * * the jurisdiction of this court to re-examine the final judgment of the state court cannot arise from mere inference, but only from averments so distinct and positive as to place it beyond question that the party bringing a case here from such court intended to assert a Federal right." See also, *Godchoux Co. v. Estopinal*, 251 U. S. 179 at 181; *Beck v. Washington*, 369 U. S. 541, 8 L. ed. 2d 98, 82 S. Ct. 955, reh. den. 370 U. S. 965, 8 L. ed. 2d 832, 82 S. Ct. 1575.

It is submitted that petitioner has not complied with the above quoted rule. It is not sufficient to raise a constitutional or federal question by brief only. The first time and place in which petitioner specified a violation of any Federal Constitutional right was at pages 1 and 2 of his brief before the Supreme Court of Ohio.

For this Court's convenience with respect to petitioner's failure to introduce a federal question, we now cite the closing remarks of counsel for petitioner before the Board of Commissioners on Grievances and Discipline.

> "Mr. Haynes: You bet we rest, your Honor.
>
> Chairman Beirne: Case submitted. Mr. Grieser, you said you wanted to make some comments at the conclusion of this case?
>
> Mr. Grieser: It's late, and what I want to do is simply to outline my position. Now, if the other side will agree that I can make the same position in writ-

ing, I will be glad to do so, because I merely want to make sure the record is complete with respect to our various motions and our positions, and this is especially true since my examination of the procedure under the rule led me to believe that there is no preliminary procedure to test any of these things as a matter of law, and that simply by answer you have to raise the issues that you expect by way of defense, whether they be of law, whether they be ordinarily one that you would raise by demurrer or otherwise, and for that reason I would like at least to go through these Specifications step by step, unless it can be agreed here that I can raise the same questions as a matter of law in the brief.

Mr. Haynes: Gentlemen, we will offer no technical objection of any kind.

Judge Middleton: All right. Would you let him say—

Mr. Haynes: Sure. Let him say it, certainly.

Mr. Grieser: In other words, let me be clear on this. I don't want to waive anything. I have quite a few objections to the admission of certain testimony. I believe that some of these Specifications should be stricken as a matter of law; I believe some of them should be stricken because of insufficient evidence; I believe some should be stricken because of no evidence; I believe some of them should be denied because they are not supported, where the proof has not been reached, which is the preponderance of evidence; and a few of them, particularly the first one, I think, as a matter of law should be stricken.

Now, I merely say at this late hour, if I am permitted to do that in a formal statement as an opening for my brief, I will do so.

Chairman Beirne: We are perfectly willing tc hear you now, if it is understood this is not an extended argument. You merely want to get whatever objections you have in the record?

Mr. Haynes: I want to know where we stand,

your Honors. We rested here quite some time ago on the ten Specifications. Weren't all the objections made to them at that time? How can we come as far back as on the tenth?

Chairman Beirne: Well, I don't know. I can't anticipate what he is going to say, so I can't very well answer the question.

Mr. Haynes: I ask that he confine himself to 11, 12, 13, and 14.

Judge Middleton: Doesn't he have the right to argue the sufficiency of the record with respect to all of them?

Chairman Beirne: I think so.

Mr. Haynes: They waived argument at the end of the taking of testimony.

Chairman Bierne: We are willing to hear what he has to say. I think it might help us in making up our own minds. If there is something we overlooked, we want to know what it is.

Mr. Grieser: Unless there has been a complete misunderstanding, it was my understanding that at the end of the evidence the Defense has the right to make motions and raise issues of law.

Chairman Beirne: That's right. We will be glad to hear you, Mr. Grieser.

Mr. Grieser: First of all, with respect to Specification No. 1, we move that this Specification be dismissed as a matter of law.

The grounds for our motion are in the amended answer, and in addition, I would like to say that the entry of private reprimand and plea of nolo contendere was unauthorized by the Statutory proceedings governing the Common Pleas Court at that time, or, to turn it the other way around, the Common Pleas Court was unauthorized and without jurisdiction, because at that time the Ohio Supreme Court rule assuming exclusive jurisdiction had been promulgated.

I might say that I would like an opportunity to

brief the law on that, because I don't think really I have the time to go into all the law and all the facts here this afternoon.

Chairman Beirne: I think maybe we can shorten some of these, perhaps not all of them. On that the Panel is of the opinion that the Specification of misconduct in 1 does not state a charge of misconduct under the rule, and, therefore, that motion will be granted.

Mr. Grieser: Thank you, sir.

Chairman Beirne: Now, I want to say this: That this Panel, as all the Panels, does take into consideration any prior charges against a Respondent, not for the purpose of determining whether or not he is guilty or innocent of the case before the Panel, but in determining, if they find he is guilty of any charge, what should be the recommendation so far as discipline is concerned.

Mr. Grieser: In that connection I do want again to call the attention of the Panel to the fact that I do believe that this was an unauthorized entry, if it is called an entry, of private reprimand. It can't be any more than that; it can't be an entry of public reprimand.

Chairman Beirne: Well, you can't question the Court's records. You are proposing we go back to the Court's records, but this was an action taken by the Court, whether it was authorized or not.

Mr. Grieser: I agree with that, but the Panel can and indeed must go to the jurisdiction and power of the body entering or making the entry at the time, as to whether the entry in all its parts was authorized and was under the jurisdiction of the Court.

The Specification No. 2, preliminarily—and I am going to group all these together, whether they have been made before or not, because I think it makes it much simpler here—Respondent moves that the testimony of Clara Beighley and Olive Beighley be stricken from the record on the ground that this Panel

was not authorized to take testimony in a foreign jurisdiction, and that if by any stretch of the imagination, the proceedings over there could be called a deposition, the formalities of notice, and so forth, with respect to the deposition which apply to these proceedings were not complied with.

Chairman Beirne: The motion on that will be overruled, because there was no objection made until this witness had testified, not only on direct examination, but a substantial amount of testimony was given on cross examination. That was when the motion was first made.

Mr. Grieser: Well, I will have to take my exception to that and make my answer to that. I don't believe, whether an objection is made or not, that the inherent jurisdiction or authority is waived by failure to object at the time and place.

Chairman Beirne: No, sir.

Mr. Grieser: Now, with respect to Specification 2, we make the motion that the Panel should deny this Specification in any event, on the ground that the proof was not met by a preponderance of evidence.

Chairman Beirne: Pardon me. Are you still referring to 2?

Mr. Grieser: Specification 2.

Chairman Beirne: That will be overruled, because that will go to the weight of the evidence.

Mr. Grieser: Specification 3: We move that this Specification be denied for the same reason.

Judge Middleton: Insufficient evidence?

Mr. Grieser: Insufficient evidence.

Chairman Beirne: That will be overruled for the same reason.

Mr. Grieser: Specification No. 4 has been stricken, it is my understanding.

Chairman Beirne: That is Rakestraw?

Mr. Grieser: No.

Mr. Haynes: Cotellesse. That is true. It has been stricken.

Chairman Beirne: It has been stricken. There was no evidence offered to support it.

Mr. Grieser: Specification No. 5: We move to dismiss that Specification as a matter of law, on the grounds that the Relator's own witness and their own evidence with respect to this specification was insufficient as a matter of law to support the charge—

Mr. Haynes: We will dismiss No. 5.

Mr. Grieser: All right.

Chairman Beirne: So the motion is granted on that.

Judge Middleton: By consent.

Chairman Beirne: By consent of both parties.

Mr. Grieser: Specification No. 6: We move to dismiss that specification for a total lack of evidence to support this charge in any way.

Mr. Haynes: We will dismiss No. 6.

Chairman Beirne: That is granted by consent of the Relator.

Mr. Grieser: Specification No. 7: We move to dismiss that specification as a matter of law, on the ground that the evidence fails to show any activity that was in any way connected with or to the knowledge of or instigated by the Respondent. This relates to Marie Rakestraw, and the only evidence there concerned a Mr. McKinney, and the evidence is uncontradicted that Mr. McKinney had never mentioned Mr. Ruffalo.

Judge Middleton: That is No. 7?

Mr. Grieser: Yes, sir. Now, I am not saying that is on the weight of the evidence. This is on a total lack of evidence.

Chairman Beirne: That will be granted. I might say, gentlemen, that is granted on the ground that there was no competent testimony that McKinney had authority from the Respondent, Ruffalo.

Mr. Grieser: Right. Now, with respect to Specification No. 8, let us go to 8(C) first. I understand that that has been stricken.

Chairman Beirne: 8(C) is stricken, that is correct.

Mr. Grieser: And Specifications 8(a) and (b) we move to dismiss as a matter of law, on the grounds that the charges and the evidence do not constitute misconduct within the definition of the Ohio Supreme Court rule.

Chairman Beirne: That will be overruled.

Mr. Grieser: And I might say I will brief that point very thoroughly for the Panel.

Chairman Beirne: That, incidentally, is the one that goes to the question developed in the Ethics Committee of the American Bar Association, as referred to by Mr. Ruffalo.

Mr. Grieser: Yes, under Canon 10.

Chairman Beirne: Yes.

Mr. Grieser: Under Canon 10, yes.

With respect to Specification 9, we move to discharge 9 on the ground of insufficient credible evidence.

Chairman Beirne: That will be overruled for the same reason as our reason on 8(a) and (b).

Mr. Grieser: With respect to Specifications Nos. 10, 11, and 12, we move that they be denied on the ground that Relator has failed to meet the burden of proof.

Chairman Beirne: That is overruled.

Mr. Grieser: I might say, of course, that that probably goes to the ultimate finding of the Panel, and I will brief that. In other words, this concerns argument on fact and evidence.

Judge Middleton: That is all three, 10, 11, and 12?

Mr. Grieser: That is correct.

Chairman Beirne: That's right, because you still have Medure's testimony and the Respondent's testimony.

Mr. Grieser: I don't want to mislead the Panel, and I want you to know exactly where we are headed.

We will argue that out on the facts and on the evidence, 10, 11, and 12.

No. 13: We move to dismiss that specification as a matter of law. And I want your Honors to consider this very carefully when I brief it, on the ground that the facts as stated, as distinguished from the conclusions reached by the Relator, do not constitute misconduct under the Ohio Supreme Court rule.

Chairman Beirne: No, that is not the question raised. What Orlando did was work with Respondent in connection with cases that the Respondent had as Counsel against the B. & O. Railroad—

Mr. Grieser: Some of those cases, yes.

Chairman Beirne: —at the same time that Orlando was employed by that railroad. There is no question of fact on that.

Mr. Grieser: There is no question on that, and I am prepared to, I think, demonstrate that as a matter of law that does not constitute misconduct on the part of the Respondent.

Chairman Beirne: And you will put that in your brief?

Mr. Grieser: Yes, sir.

Chairman Beirne: Well, on that, then, we will reserve ruling until we have read your brief on that question. So that is about the only one I know of that we haven't ruled on.

Mr. Grieser: With respect to Specification No. 14, we move to dismiss this as a matter of law on the ground—well, I just simply renew my motion. We move to dismiss this on the ground that as a matter of law there is no evidence in support of Specification No. 14, no competent evidence whatsoever.

Chairman Beirne: We will take that under advisement."

We have had printed as Appendix A, the Findings of Fact, Conclusions of Law, and Recommendations of the Board of Commissioners on Grievances and Discipline of

the State of Ohio so that this Court may appreciate the full consideration given petitioner by said Board. Not a Federal Constitutional question was raised or a Federal Statute invoked. We believe it only fitting that this Court should read especially Charge No. 1, although it was dismissed by said Board. It clearly shows the petitioner not to have been a "novice" in the undertaking of violating the ethics of the legal profession.

Said Charge No. 1 shows petitioner to have been reprimanded January 21, 1957 and the Supreme Court of Ohio with respect thereto made certain comments as to his general character, which are as follows and as quoted from page 41 of the petition for writ of certiorari:

> "This is not the first time that respondent's conduct as a member of the bar has been questioned and found improper. After he was found 'guilty of unprofessional conduct in his office as an attorney at law * * * in that he did by and through duly authorized agents and employees solicit professional employment from sundry people' and was disciplined *therefor in 1957, he showed a contempt for the court,* which made that finding and provided a very lenient discipline for his misconduct. Although he admittedly was well able to pay the costs amounting to several hundreds of dollars and had been ordered by that court to 'pay the costs of this proceeding within 30 days,' he neglected to make any effort to pay them until shortly before the first hearings in these proceedings more than five years later."

Counsel for respondent states to this Court professionally, that the costs were paid a few minutes before the hearing before the Board of Commissioners on Grievances and Discipline started in this instant case.

CONCLUSION.

From the foregoing it is the position of respondent, the Mahoning County Bar Association, that petitioner did not timely or properly raise a Federal question in the Supreme Court of Ohio with such precision that it was apparent that he intended to assert a Federal right. Certainly this was not apparent to the Supreme Court of Ohio, for it did not decide any Federal issues. In addition, petitioner has not presented any question in his jurisdictional statement which is substantial or which has not been previously raised in this Court in cases pending on certiorari from the Supreme Court of the State of Ohio; especially the two most recent cases, *Kenneth Agee, Appellant v. The Columbus Bar Association*, Case No. 259, October Term of 1963; and likewise, during the same term, *Stanley Juris, Appellant v. The Columbus Bar Association, Appellee*. Writs of certiorari in both of these cases were dismissed for the reason that it was held by this Court it was without jurisdiction in this type of case. For these reasons the petition for a writ of certiorari should be denied.

Respectfully submitted,

DAVID C. HAYNES,
Counsel for Respondent,

COMUS M. BEARD,
Counsel for Respondent.

APPENDIX A.

BEFORE THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OF THE SUPREME COURT OF OHIO.

CASE NO. 75.

IN RE
COMPLAINT AGAINST JOHN RUFFALO, JR.,
Respondent,

VS.

MAHONING COUNTY BAR ASSOCIATION,
Relator.

Findings of Fact, Conclusions and Recommendation of Board of Commissioners.

This matter came on for the consideration of the Board of Commissioners on Grievances and Discipline on the report of the Hearing Panel, the transcript of the record including the evidence and proceedings before the Panel and the briefs of counsel for the Relator and the Respondent, all of which have been duly and fully considered by the Board and upon consideration thereof, the Board makes the following findings of fact, conclusions and recommendation:

The Respondent, John Ruffalo, Jr., was admitted to the Bar of the State of Ohio in August 1946 and has practiced since that time in Youngstown, Ohio.

CHARGE NO. 1.

It is charged that on Monday, January 21, 1957, the Respondent entered a plea of nolo contendere and was found guilty of unprofessional conduct in his office as an attorney, in that he did by and through authorized agents

and employees, solicit professional employment from sundry people; that Respondent was privately reprimanded and promised that he would never solicit professional employment again and that the costs of the action in the sum of Four Hundred Ninety Dollars ($490.00) were assessed against him but had not been paid by him as of September 6, 1962.

A certified copy of the journal entry of the Common Pleas Court of Mahoning County entered January 21, 1957 was introduced in evidence to support the charge together with the unpaid cost bill. According to the Respondent the costs were paid by him on December 26, 1962, the first day of the hearing by the Panel. Objection was made to the introduction of the certified copy of the complaint and objection is made to Charge No. 1, in the Respondent's answer, on the ground that the specification is not relevant or material to the proceeding and on other grounds.

CONCLUSION.

The Panel concluded this specification did not state a charge of misconduct within the meaning of Rule XXVII and it was dismissed.

CHARGE NO. 2.

It is charged that the Respondent solicited employment from Mrs. Clara Beighley, New Castle, Pennsylvania, in a claim against the Baltimore & Ohio Railroad Company by reason of the death of her husband, Clyde Beighley, who was a conductor employed by the railroad and was injured on March 4, 1957 and died on June 16, 1957; that approximately two or three weeks following his death, Respondent personally called at said widow's home to solicit professional employment from her for the purpose of prosecuting her claim by reason of her husband's death.

The evidence to support this charge consists of the testimony of Mrs. Clara Beighley, the widow of Clyde E. Beighley, deceased, and her daughter-in-law, Olive Beighley, which was given before the panel on the evening of Wednesday, December 26, 1962 at the residence of Mrs. Clara Beighley in New Castle, Pennsylvania, counsel for both parties and the Respondent being present. According to Mrs. Beighley, the Respondent and a Mrs. Colina (otherwise referred to as Mrs. Colange), came to Mrs. Beighley's home in New Castle, introduced themselves to her and Mrs. Colina, said they wanted to talk to her about her husband's case. They talked it over and Mrs. Beighley gave Respondent the case. She denied that she had sent for Respondent or that she was otherwise acquainted with him before he appeared at her home with Mrs. Colina. Subsequently, Mrs. Beighley went to Respondent's office at his request, being driven there by her son and employed him and she signed an employment contract on July 23, 1957 (Respondent's Exhibit 7). The case was eventually settled for $1,500.00 but Mrs. Beighley received none of the proceeds of the settlement because Respondent told her that she owed him that much because of advances in the amount of $50.00 each which the Respondent had made to her from time to time. Respondent himself testified that the total amount of these advances was $1,025.00 over the period of four years when he was representing her.

On June 15, 1962, the Respondent and his counsel and office associate, Ferdinand R. Montani, came to New Castle to see Mrs. Beighley and talked to her about a claim of $500.00 being made by the railroad for a refund of that amount due for railroad retirement payments. Both the Respondent and Mr. Montani testified about the visit to Mrs. Beighley's home on June 15, 1962 and discussing with her the claim for the refund of $500.00 and advising

her not to worry about it and that she didn't have to pay it. Although there was no evidence as to the interval of time between the conclusion of Mrs. Beighley's case and the visit of June 15, 1962, it appears from the record that there was a substantial period of time that elapsed and that the actual purpose of the Respondent and his associate in making this visit was to talk to Mrs. Beighley about the investigation by the Bar Association of Respondent's activities. On this point, Mr. Montani testified that at the meeting of June 15, 1962, Mrs. Beighley stated that "she made the statement that her friend, Mrs. Colange, had brought you over to her." Mrs. Beighley denied that she knew Mrs. Colina (Colange) before she first appeared at her home in July, 1957 with the Respondent. The Respondent called a Dominic Dimeco of New Castle, Pennsylvania, Mrs. Colina's son. He testified his mother's real name is Mary Colangelo but she is now deceased and that she did know Mrs. Beighley and that he drove his mother to Mrs. Beighley's home in July, 1957 and heard Mrs. Beighley tell his mother that Mrs. Beighley wanted to see Respondent. Dimeco explained that the Respondent had represented his step-father in 1952 in an injury case, but he admitted that his mother did not know Mrs. Beighley until two days before he took her to see Mrs. Beighley. While Mr. Montani testified that when he and the Respondent talked to Mrs. Beighley on June 15, 1962 at her home, Mrs. Beighley stated she had known Mrs. Colange from having played bingo with her, Mrs. Colange's son, Dom Dimeco, admitted that as far as he knew, his mother did not know Mrs. Beighley before June 14, 1957.

Mrs. Beighley's daughter-in-law, Mrs. Olive Beighley, merely testified about the occasion when Mr. Montani and the Respondent called on her mother in 1962 and discussed

the $500.00 refund claim being made by the railroad and another occasion after that when the Respondent attempted to see Mrs. Beighley.

Mr. James A. Wright, Attorney, Pittsburgh, Pennsylvania, testified that he had been associated with the Respondent in court in the Beighley case and that because they were unable to obtain any medical evidence, it did not appear that the case could be successfully prosecuted.

The Respondent objected to the manner in which the testimony of Mrs. Beighley was taken on the ground that it was being taken out of the state and that the witness was hostile. The objection of counsel was not made until he had concluded his cross-examination of Mrs. Beighley.

The Respondent denied that he solicited Mrs. Beighley's claim against the railroad and testified that he was called by Mrs. Colangelo (Colina) who said she was a friend of Mrs. Beighley and that Mrs. Beighley wanted to talk to him about her case and that the appointment to see Mrs. Beighley was made through Mrs. Colangelo. He explained that he knew Mrs. Colangelo from having represented her husband in a case against the Pennsylvania Railroad which was settled for $20,000.00 and that they were pleased with his work.

CONCLUSION.

The Panel concluded it would not consider the merits of the evidence submitted in support of this specification for the reason that an objection was made by the Respondent, perhaps belatedly, to the Panel's taking the testimony of Clara Beighley and her daughters outside the state of Ohio. Since the Panel felt there was sufficient question in this regard no conclusion was made on this charge. The Board concurs in this action.

CHARGE NO. 3.

It is charged that the Respondent, acting through an authorized agent, solicited the claim of Mrs. Naomi Mae Clark against the Baltimore and Ohio Railroad Company by reason of the death of her husband, Major Robert Clark who died August 13, 1957 in an accident while employed as an engine house laborer for the Baltimore & Ohio Railroad.

Naomi Clark testified that her husband had worked for the Baltimore & Ohio Railroad in New Castle and that he died on August 13, 1957 and that two weeks after her husband's death, Elijah Doster came to see her and told her that the Respondent wanted her case. She further testified that she knew of the Respondent and that a Mr. Orlando and others had talked to her about a week after her husband's death and one of those who had seen her gave her the Respondent's telephone number. She said that Elijah Doster told her that the Respondent was the man to employ and that he was also handling Elijah Doster's claim against the railroad.

It appears that Mrs. Clark had known Elijah Doster for a period of approximately twenty-one years. She testified that arrangements were made through Mrs. Betty Orlando, the sister of Michael Orlando, to meet Respondent in New Castle and that she did meet him there. Betty Orlando is the sister-in-law of Michael Orlando who was an employee of Respondent and also the Baltimore & Ohio Railroad. On September 3, 1957 Mrs. Clark signed a contract employing Respondent to represent her. The contract (Respondent's Exhibit 4) is a printed form which recites in the printed portion that

> "I, the undersigned, do hereby retain John Ruffalo as my attorney, acting only upon by own free will with-

out the inducement or solicitation of any person or persons * * *."

Mrs. Clark testified that she had been told by Elijah Doster that the Respondent would let her have money if she needed any during the time he would have her case, and that when she saw the Respondent in September, 1957 he told her that if she needed money he would give it to her. Mrs. Clark's case was settled on November 18, 1960, for $21,000.00, and the Respondent advanced approximately $600.00 to her from time to time before the settlement.

Elijah Doster testified that he had employed Respondent to represent him in a claim against the Baltimore & Ohio Railroad and that while his case was pending, Respondent called him and asked him to talk to Naomi Clark about her case against the railroad, and that pursuant to this request he did talk to Mrs. Clark about employing the Respondent. Doster testified that Angelo Medura phoned him the day before the hearing by the Panel and requested him not to come to court. It also appears that more than a year after Doster's case was settled, the Respondent contacted Doster and gave him $50.00 as a refund for medical fee which related to Doster's case against the railroad. Doster executed a receipt for the fee, dated July 14, 1961 (Respondent's Exhibit 1) and a year later on June 20, 1962 signed a statement for the Respondent (Respondent's Exhibit 2) to the effect that the $50.00 paid to Doster by Ruffalo "was given to me solely as a refund of the medical bill incurred by an examination of Dr. Robinsteen. Dr. Robinsteen died and was unable to appear for me, requiring me to obtain other doctors * * *." This statement was witnessed by Doster's son, Samuel Doster.

On July 14, 1961, the same day on which Doster was requested to sign a receipt for the $50.00, he also signed an

affidavit at the Respondent's office, which affidavit was prepared by the Respondent (Respondent's Exhibit 6). This affidavit recites that

> "Elijah Doster, after first being duly sworn, according to law, deposes and says that at the request of Mr. Ruffalo, he recommended John Ruffalo of Youngstown, Ohio, to Naomi Clark, that he contacted Gordy Marks of Newcastle, Pennsylvania, the brother-in-law of Naomi Clark, who spoke to her about Mr. Ruffalo, and that he learned a few days after that that Naomi Clark had gone to see Mr. Ruffalo, that after his original contact with Mr. Marks, he had talked with Naomi Clark and she informed him that she had gone out to see Mr. Ruffalo, * * * and that it was upon the recommendation that he had made that she came to see Mr. Ruffalo."

When Respondent was testifying on his own behalf he admitted he asked Elijah Doster to recommend Respondent to Naomi Clark, but says this was done "about 15 or 20 minutes before I had any—before I represented her." (751.)

Sam Doster testified that he heard his father state to Mr. Ruffalo that he saw Mrs. Clark at Mr. Ruffalo's request.

It also appears that contact was made by Respondent and Angelo Medura of Newcastle, Pennsylvania, with Sam Doster, relating to the question of Elijah Doster's appearance to testify before the Panel, and that Sam Doster was given $5.00 by Medura and a bottle of Respondent's whiskey. This took place at a meeting between Youngstown and Newcastle on December 24, 1962.

At the original hearing held by this Panel in December, 1962, Sam Doster testified about a discussion between himself and Medura, at this meeting, concerning a charge of homicide then pending against Sam Doster in Pennsyl-

vania. According to Sam Doster, Medura told him that he knew it would cost quite a fee "And he said 'You know that John just can't do it himself,' that 'Whatever you need,' that 'I'll get in touch with John for you, and he would give it to me to give you.'" He further testified that this conversation took place outside of the Respondent's car while Respondent was sitting in the car. However, at a subsequent hearing held by the Panel on August 16, 1963, the same Sam Doster was called to testify on behalf of the Respondent. At this hearing he testified that he lied at the previous hearing; that Medura had offered him nothing to persuade his father, Elijah Doster not to appear at the hearing before the Panel.

Doster said he'd decided to tell the truth because he realized his testimony at the previous hearing had damaged Respondent and he didn't feel right about it. He said he'd lied because he thought the Respondent had not represented his father properly and had been so informed by some representatives of the American Railroad Association. He could not explain why he decided, since the December hearing, to change his story. Since the December hearing, he was tried on the homicide charge in Pennsylvania and found guilty. He was out on bond at the time of the August hearing. Whether this had anything to do with the change in this witness' story was not shown. Because of this recantation by Sam Doster of his testimony at the preceding hearing, the Board has placed no credence whatever in this witness' testimony, given either at the preceding hearing or at the present hearing.

At the hearing in December, 1962 the Respondent offered a tape recording of a conversation between the Respondent and his associate, Mr. Montani, with Elijah Doster. Although the recording was played at one of the hearings held by the Panel, it was inaudible. At the last

hearing held on August 16, 1963, the Respondent produced David Burton, a free lance court reporter, who testified that there had been submitted to him a transcript of the tape recording, which had been prepared by the Respondent's secretary, and that the witness compared this transcript with the recording and corrected the transcript in several respects. The witness' transcript was then offered in evidence as an exhibit. However, the Panel sustained the objection to this exhibit and the Board has given it no consideration for the reason that a witness' testimony concerning his interpretation of a tape recording of a conversation with another witness violates the hearsay rule and the rule excluding the opinions of witnesses except in certain defined exceptions of which this is not one.

The Respondent testified that he was first contacted about the Naomi Clark case, by Mrs. Alexander Orlando, Mike Orlando's sister-in-law, on September 30, 1957, when he had returned from a vacation, and that Mrs. Orlando said that she was a friend of Naomi Clark and that Naomi Clark wanted to see him and he suggested that Miss Clark come to see him, but Mrs. Orlando told him she couldn't come and suggested that the Respondent come to Mrs. Orlando's home. Respondent said that he had never known Mrs. Orlando before, although she was the sister-in-law of Mike Orlando, who was then an employee of the Respondent.

Mrs. Lois Scopio, Michael Orlando's sister, testified that she was a bookkeeper at a store in Newcastle where Naomi Clark had purchased a coat, and that Naomi Clark had no money to pay for the balance due on the coat, and in the course of the conversation about her account she asked the witness whether she had ever heard of the Respondent, and then asked the witness to call the Respondent, which Mrs. Scopio said she did, but was un-

able to reach him because he was on a vacation. She testified that Naomi Clark subsequently told her that she had talked to Betty Orlando, Michael's sister-in-law, and had asked her to get in touch with the Respondent.

CONCLUSION.

It is the conclusion of the Board that the evidence with respect to this charge establishes that Respondent was guilty of misconduct in soliciting employment from Mrs. Naomi Clark in violation of Canon 27 of the Canons of Professional Ethics.

CHARGE NO. 4.

The Respondent is charged with soliciting professional employment through one of his agents, Michael Orlando, to represent one Sam Cotellesse, who had a claim against the P. & L. E. Railroad Company for injuries received on August 12, 1958 when he was employed by this company.

CONCLUSION.

No evidence was offered to support this charge and it was, therefore, dismissed by the Panel.

CHARGE NO. 5.

It is charged that the Respondent through his agent, Michael Orlando, attempted to solicit professional representation from one James F. Quinn for injuries received by Quinn on November 22, 1958, while he was working for the Baltimore & Ohio Railroad. The evidence offered in support of this charge was the testimony of Mr. Quinn and also an affidavit of Mr. Quinn (Relator's Exhibit 4). Although Mr. Quinn was called to testify on behalf of the Relator, he denied that Orlando attempted to solicit his claim against the Railroad for the Respondent, and said

that he had known Orlando for forty years and they were both friends, and that Quinn had contacted Orlando and asked Orlando to tell the Respondent that he desired to talk to him about his case against the Railroad. Quinn testified that he did talk with the Respondent but did not employ him. Quinn's affidavit was substantially the same as his testimony.

CONCLUSION.

The Panel concluded the evidence did not support this charge and it was therefore dismissed.

CHARGE NO. 6.

It is charged that the Respondent personally attempted to solicit professional employment of one Andrew Buletko, to represent him in his claim for damages against the P. & L. E. RR Company, arising out of injuries sustained on March 27, 1960, while Buletko was employed by the railroad.

Andrew Buletko testified in support of this charge that he was injured on March 27, 1960, and that while he was in the hospital an attorney came to see him about his case and his name sounded like John Ruffalo, but on cross-examination the witness admitted that he couldn't identify the Respondent as the person who had called on him at the hospital, and said that he had never seen the Respondent before. Buletko further admitted signing a statement for Mr. Montani on September 18, 1962, in which he said he was not sure of the name mentioned to him by the man who came to see him.

Philip Morganti, an attorney practicing in Youngstown, testified that he represented Buletko in connection with this same claim and had been his attorney for a number of years. He testified that Buletko had called him and

told him that Ruffalo had been to see him, and that the name Ruffalo was mentioned by Buletko without any doubt. Later, however, Buletko told Morganti that he wasn't sure whether the name was "Ruffalo, Buffalo, or Tuffalo."

The Respondent testified that the first he knew of Buletko was when Mr. Morganti called him and informed him that the Mahoning County Bar Association was investigating Respondent's activities in connection with the Buletko case. Respondent denied that he had ever been in the hospital at the time that Buletko was a patient there, and denied that he had ever seen Buletko until he went to see him at his home to obtain a statement from him in connection with the charges of the Bar Association.

CONCLUSION.

The Panel concluded the evidence did not support this charge and it was therefore dismissed.

CHARGE NO. 7.

It is charged that the Respondent by and through his agent, one McKinney, attempted to solicit professional employment from Mrs. Mae Marie Rakestraw, in connection with her claim against the Pennsylvania Railroad, by reason of the death of her husband, which occurred in November, 1960.

Mrs. Rakestraw testified that her husband died on November 30, 1960, and that two weeks later Louis E. McKinney came to see her and talked to her about her claim against the railroad; that she told McKinney that she was already represented by Attorney Harold Yost. She testified that McKinney returned several weeks later and told her he represented Attorneys Ruffalo and Wall, and that they were specialists in suits against corporations, espe-

cially railroads; whereas, the attorney representing her, Harold Yost, was a divorce lawyer, and that McKinney produced some papers, including photostatic copies of cancelled checks in settlement of claims against the railroad and that he told her that Ruffalo and Wall were representing Mrs. Schultz in a claim against the railroad. Mrs. Rakestraw knew Mrs. Schultz, whose husband had worked with Mrs. Rakestraw's husband.

Louis McKinney testified that he had done investigating work for Clinton J. Wall, an attorney in Youngstown, and had been employed by him to investigate the Schultz case and went to see Mrs. Rakestraw in connection with that case. He denied that he mentioned Mr. Ruffalo's name to Mrs. Rakestraw or that he had been authorized by the Respondent to contact her.

A deposition of Clinton J. Wall was read into the evidence. He testified that he did represent Helen Schultz in December, 1960, and that he subsequently employed Mr. Ruffalo to handle this case in court for him. Wall testified that he had employed Mr. McKinney to investigate the Schultz case and that to his knowledge the Respondent did none of the investigation.

CONCLUSION.

The Panel concluded that the evidence failed to establish that the Respondent authorized Louis McKinney to contact Mrs. Rakestraw to solicit her claim and this charge was therefore dismissed.

CHARGE NO. 8.

It is charged that the Respondent advanced monies to Clara E. Beighley, Naomi Clark, and Sam Cotellesse while handling their claims, and deducted such advances from settlements of their claims. The uncontradicted evi-

dence establishes that Respondent did advance a total of $1,025.00 to Clara Beighley during the period of time that he represented her, and that he advanced $611.00 to Naomi Clark during the time that he represented her. Respondent's representation of each of these parties extended over a period of several years. Respondent admits that these funds were advanced, but justifies the advances on the ground that they were made as an act of kindness at a time when these clients were in difficult circumstances. No evidence was offered to prove any advances to Sam Cotellesse.

The Legal Ethics Committee of the American Bar Association rendered an opinion, Number 288, on October 11, 1954, to the effect that payments, pending trial in personal injury cases, by an attorney to or for the benefit of his injured client, for any purpose other than to cover expenses of litigation subject to reimbursement, are improper. In reaching this conclusion the committee considered Canon 42 which provides:

> "A lawyer may not properly agree with a client that the lawyer shall pay or bear the expense of litigation; he may in good faith advance expenses as a matter of convenience, but subject to reimbursement."

The Committee also considered Canon 10 which provides:

> "The lawyer should not purchase any interest in the subject matter of the litigation which he is conducting."

Canon 42 refers to expenses which are connected with the litigation such as court costs, depositions and similar expenses. It was the committee's opinion that a lawyer who makes advances to his client for other purposes thereby acquires an interest in the subject matter of the litigation

which he is conducting in violation of Canon 10. The committee also observed that the practice, if publicized, constitutes a holding out by the lawyer of an improper inducement to clients to employ him in addition to the assurance of performing legal services for the client. In other words, such practice can constitute an indirect form of solicitation. The committee observed that the conclusion which it reached is contrary to the conclusion reached by the Supreme Court of Illinois in the case of *State E. R. Chicago Bar Association v. McCallum,* 341 Ill. 578, 173 N. E. 827. Three of the judges of the Supreme Court of Illinois dissented from the conclusion of the majority. The question was considered by Judge Beamer of the United States District Court for the Northern District of Indiana, Hammond Division, on September 26, 1962, in the case of *El Janny v. Cleveland Tankers, Inc.,* 209 F. Supp. 91. Judge Beamer held that a lawyer was not entitled to an order reimbursing him for monies advanced to his client and stated in the opinion:

> "The propriety of the practice of loaning or advancing money to clients in personal injury cases has long been questioned by the courts and the organized bar."

He cited and quoted from Opinion 288 of the Committee of the American Bar Association.

While it may be questioned whether or not an occasional advance or loan by a lawyer to a client constitutes a violation of Canon 10 or Canon 27, it is clear that where such advances are frequently made to various clients over an extended period of time, such practice does establish the violation of Canon 10 in that the lawyer acquires an interest in the subject matter of the litigation which he is conducting, beyond the payment of his fee. Moreover the practice constitutes an indirect form of solicitation in

providing an inducement to seek out such lawyers for employment for reasons unrelated to their professional competence. The facts in the present case establish that the Respondent advanced money to Clara Beighley, Naomi Clark and Andrew Masters in various amounts, which according to Respondent's own testimony totaled $2,936.-00. It further appears that the practice of Respondent in making such advances was known. One of the witnesses, Elijah Doster, testified that when he contacted Naomi Clark about employing Respondent, Doster told her that the Respondent would lend her money if she needed any. Naomi Clark confirmed this testimony. Andrew Masters testified that the subject of advancing money was discussed with Respondent on the first occasion that Masters visited him.

CONCLUSION.

It is, therefore, the conclusion of the Board that the Respondent is guilty of unprofessional conduct in violation of Canon 10 and Canon 27.

CHARGE NO. 9.

It is charged that Respondent promised to advance money and later did advance money to Andrew Masters during the pendency of Masters' case against the Pennsylvania Railroad. The evidence establishes that there was a discussion between Respodent and Masters about the advancement of money to Masters at the time Masters first saw Respondent and signed his contract of employment on May 29, 1958 (Respondent's Exhibit 10), and that Respondent advanced monies to Masters on fifteen separate occasions in a total of over $1,200.00 during the period Respondent was representing Masters.

CONCLUSION.

It is the conclusion of the Board that Respondent is guilty of unprofessional conduct in violation of Canon 10 and Canon 27 of the Canons of Ethics.

CHARGE NO. 10.

It is charged that Respondent is guilty of unprofessional conduct in atempting to influence Elijah Doster in that he endeavored to have Doster sign a false statement that Doster had not been contacted by the Respondent in an effort to have Doster help in the solicitation of the case of Naomi Clark; that at the time Respondent attempted to take said false statement from Doster he paid him the sum of $50.00 in cash. Some of the evidence in support of this charge is discussed in connection with Charge No. 3 pertaining to solicitation by Doster on behalf of the Respondent of Naomi Clark's case. The evidence does establish that on or about July 14, 1961, Respondent prepared an affidavit which Elijah Doster refused to sign until it was corrected, but there is no evidence as to the contents of such affidavit and, therefore, it cannot be said that the Respondent attempted to have Doster sign a false affidavit. However, the evidence does establish that on the same date Respondent paid $50.00 to Doster and requested him to sign the affidavit, an investigation was being made by a Mr. White of the American Association of Railroads relating to Respondent's activities in suspected solicitation of claims. The payment by Respondent to Doster on that date was obviously for the purpose of influencing Doster as a prospective witness.

CONCLUSION.

It is the conclusion of the Board that the Respondent was guilty of misconduct in attempting to influence Elijah Doster by the payment of $50.00 to him, in violation of Canon 29 and Canon 32 of the Canons of Professional Ethics.

CHARGE NO. 11.

It is charged that on Christmas Eve, December 24, 1962, the Respondent attempted to intimidate Samuel Doster who was to appear before the hearing panel, by approaching him at Lincoln Knolls Bowling Alley on Route 422 in Youngstown, to prevent him from appearing as a witness by offering him sundry considerations; that the Respondent gave Sam Doster a fifth of whiskey and $5.00 for the purpose of prevailing upon him to prevent his father, Elijah, from appearing as a witness.

The evidence with respect to this charge was received above in connection with the consideration of Charge No. 3 relating to Naomi Clark's claim. The evidence is uncontradicted that the Respondent and Angelo Medura did have a meeting with Samuel Doster on Christmas Eve, December 24, 1962, which was after the Respondent received notice of the hearing scheduled by the Panel for December 26, 1962. Respondent said that he merely talked to Sam Doster and asked him to request Sam Doster's father, Elijah, to tell the truth. He denies attempting to influence Sam Doster. It is nevertheless a fact, as testified to by Angelo Medura, that the Respondent did contact Medura for the purpose of having Medura talk to Andrew Masters and that Medura did contact Andrew Masters in connection with the charges pending against Respondent, and that the Respondent was also with Medura for the

purpose of talking to Sam Doster. At this meeting Medura did in fact give Sam Doster $5.00 and a bottle of whiskey which was the property of Respondent. While the evidence does not definitely establish that the Respondent was a party to the discussion between Medura and Sam Doster, it is a fact that such discussion took place outside of Respondent's automobile and that Respondent was in the automobile at the time it took place. It is reasonable to infer that whatever discussion took place between Medura and Doster was known to Respondent. Inasmuch as the admitted purpose in seeing Sam Doster was to have him contact his father, Elijah, about his testimony at the hearing before the Panel, it must be concluded that the gifts made to him at this meeting, were for the purpose of influencing him and thereby accomplishing the objective of the meeting. In reaching the conclusion with respect to this charge, the Panel completely disregarded the testimony of Sam Doster given at the original hearing of the Panel in December, 1962, as stated previously in the discussion on Charge No. 3, because this witness recanted that testimony at the hearing held on August 16, 1963 and said that he lied at the December hearing. For the same reason, the Panel disregarded Doster's testimony given at the hearing held on August 16, 1963.

CONCLUSION.

It is the conclusion of the Board that the Respondent is guilty of misconduct as charged and has violated Canon 29 and Canon 32 of the Canons of Professional Ethics.

CHARGE NO. 12.

It is charged that the Respondent, through one or more of his agents acting on his behalf, did attempt to intimidate the witness, Andrew Masters, on or about Sun-

day, December 23, 1962, by having his agent offer Masters the sum of $300.00 to keep him from appearing before the Panel as a witness on behalf of the Relator.

Some of the evidence with respect to this charge is discussed above in connection with Charge No. 11. It does appear from the testimony of Andrew Masters that Angelo Medura called Masters on December 23, 1962, and met him and told Masters that "He had an opportunity to get some beer joint, that Mr. Ruffalo was going to back him up * * *"; that Medura further said "You can get $300.00 and you don't have to appear and you're doing me a hell of a big favor." Medura admits talking to Masters on Sunday, December 23, 1962, at Newcastle about Masters' appearance as a witness before the Panel, and that he saw Masters at the Respondent's request. He denied offering Masters any money and explained that Masters was angry with Respondent because Masters was not satisfied with the verdict which had been obtained and because the Respondent did not appeal the case. Medura does admit stating to Masters "Andy, what are you going to gain by going over to Youngstown to hurt this man."

In view of the fact that Medura had contacted Masters at Respondent's request and had also talked to Sam Doster in the presence of Respondent about being a witness before the Panel in the charges against the Respondent, and had admittedly offered Doster inducements not to appear as a witness, the Board concludes that the evidence supports the charge that Medura did offer Masters a consideration to prevent Masters from appearing as a witness against the Respondent.

At the hearing which the Panel held on August 16, 1963, the Respondent called two witnesses, Joseph Edward Petite and Carl R. Foster, who testified that on December 27, 1962, they had gone to the dining room of the Tod

Hotel in Youngstown at the request of the Respondent, and taken a table next to that which was occupied by Mr. and Mrs. Masters and a Mr. White, who represented the American Association of Railroads, and that during this conversation Masters was overheard telling White that Medura did not offer Masters any money, and that Masters was a friend of Medura's and did not want to hurt him, and White replied that while Masters did not want to hurt Medura he did want to get at Ruffalo, and White told Masters that Masters should go in and testify about being offered $300.00 by Medura. Both of these witnesses admitted that the Respondent had formerly represented them in personal injury cases. They were both unemployed at the time they gave their testimony. They said they occasionally did work for the Respondent. The Relator objected to the testimony of both of these witnesses concerning the conversations which they allegedly overheard between White and Masters. The objection was sustained for the reason that if the purpose of such testimony was to contradict the testimony given by Masters at the previous hearing, it was necessary to lay a foundation for such contradictory testimony by first asking Masters himself about the alleged conversation between him and White. This was not done, and, therefore, the testimony of both of these witnesses wa. nothing more than hearsay. *King v. Wicks*, 20 Ohio 88; *Columbus v. Freeze*, 100 O. A. 37, 59 O. O. 474; 56 *O. Jur.* (2d) 816, Sec. 380.

CONCLUSION.

It is the conclusion of the Board that the Respondent is guilty of unprofessional conduct as charged and has violated Canon 29 and Canon 32 of the Canons of Professional Ethics.

CHARGE NO. 13.

It is charged that the Respondent conspired with Michael Orlando and paid Orlando money for preparing lawsuits against the Baltimore & Ohio Railroad which was Orlando's employer.

The evidence in support of this charge is not in dispute. Orlando worked as an investigator for the Respondent from 1953 to July 19, 1962. During this same period he was also an employee of the Baltimore & Ohio Railroad. He was suspended by the railroad on July 21, 1962 on charges of soliciting claims. A hearing was held on these charges but Orlando did not appear because he says he was in the New Castle Hospital. During his employment with the Respondent, Orlando was paid $25 a day plus expenses and investigated all of the Respondent's railroad cases. He said that he worked an average of ten or fifteen days a month for the Respondent. Withholding slips, Internal Revenue Form 1099, were received in evidence as Relator's Exhibits 7-A, 7-B, 7-C, 7-D and 7-E and showed the following amounts paid to Orlando by the Respondent:

1957—$2,950.00
1958— 1,250.00
1959— 1,237.37
1960— 3,829.25
1961— 4,716.00

According to Orlando, Respondent paid him in cash for which Orlando said he signed receipts. Orlando said that the Respondent kept no records, but paid Orlando on the basis of Orlando's records, but didn't keep these records after his Income Tax returns were filed (R. 641, 654, 655). Respondent stated:

"We worked on that basis for the particular reason that we didn't want this man to be accused of exactly

what he was accused of, which he wasn't doing and which he did not do, but the fact was that I was trying to protect him. He was trying to help me as an investigator. He had certain knowledge, certain abilities that I needed, and I was trying to protect him, and that was the reason that we worked this thing out this way. With any other person that has ever done any work for me, like Mr. Guthrie in my office, or anyone else, I have paid him by check, but particularly for security reasons for this man, that was the reason we worked it this way."

Later Respondent testified that he had no record of payments made to Orlando on his books. He also testified that—

"* * * as soon as they were examined by the Internal Revenue Department, why, we got rid of them, because we didn't want to keep them, because of the fact we didn't want to involve Mike—" (R. 44).

The Respondent was ordered by a subpoena issued by the Board (Relator's Ex. 8) to produce "all your records, checks, disbursements and receipts of any kind or nature showing ayments to Michael Orlando of New Castle, Pa. for the years 1957, 1958, 1959, 1960, 1961 and 1962." Respondent only produced the witholding slips, Form 1099 (Relator's Exhibits 7-A, 7-B, 7-C, 7-D and 7-E above). Respondent was also requested by the Chairman of the Panel to produce all of his records so that counsel for the Relator could determine for themselves whether or not his records contained any entries which would reflect on the payments made by Respondent to Orlando (R. 427, 428, 429). The Respondent did not produce his records and refused to comply with the request of the Chairman of the Panel (R. 596, *et seq.*).

Although the full extent of Orlando's activities in behalf of the Respondent could perhaps be better de-

termined if Respondent had submitted his records for examination as requested by the Chairman of the Panel, there is no dispute about the fact that the Respondent did employ Orlando to investigate cases against the Baltimore & Ohio Railroad while Orlando was working for that railroad. (R. 672, 673.) Furthermore, the Respondent admits that he kept no entries of payments to Orlando so that he would have no record which would disclose the fact that Orlando was employed by the Respondent. The panel questioned the Respondent at length (R. 656, *et seq.*) on his views relating to the practice of employing Orlando to investigate cases against the Baltimore & Ohio, while he was employed by that company. He saw nothing wrong with the practice because he was "doing something altogether different from the type of work he was doing on the railroad" (R. 658). But he admitted employing Orlando because of the advantages in having a railroad man working for him (R. 660). He saw no distinction between employing any railroad employee and one who was investigating claims against his own employer, because "our concepts have changed * * *."

CONCLUSION.

The Board does not agree that "our concepts have changed" with respect to the fundamental principle that an agent cannot serve two masters. In 1881 the Supreme Court decided the case of *Bell v. McConnell,* 37 O. S. 396. In the Opinion in that case, it is stated (399):

> "In law, as in morals, it may be stated, as a principle, no servant can serve two masters, for either he will hate the one and love the other, or else he will hold to the one and despise the other. Luke 16, 13."

The Board concludes that the statement of this moral and legal principle is as valid today as it was 82 years ago

when *Bell v. McConnell* was decided. See also 2 *O. Jur.* (2d) 178, Sec. 118, and 35 *O. Jur.* (2d) 699, Sec. 78.

The Board cannot agree with the Respondent's contention that the principle condemning double-agency does not apply because of the difference between Orlando's duties as a railroader from those as an investigator. The fidelity which the employee owes his employer is the same regardless of any distinction which may be made between the nature of the duties he is performing for his employer and those which others may employ him to perform against his employer.

On page 43 of their brief, counsel for Respondent cite Title 45 U. S. C., Sec. 60 which makes it unlawful to attempt to prevent an employee of a common carrier from voluntarily furnishing information to "a person in interest" as to facts incident to the injury or death of any employee. It is contended by counsel that the provisions of this section of the United States Code make the arrangement between Orlando and Respondent a valid and proper one; that if the Board should hold that the activities of Orlando constitute a basis for discipline of Respondent, such holding would constitute an interference by the State of Ohio with the policy of the Federal law governing the rights of railroad employees under the Act. It is the conclusion of the Board that there is a clear distinction between the action of an employee in "furnishing voluntary information to a person in interest" and those of an employee employed by a lawyer to investigate cases against his employer. There is no provision of the section of the Code which in any way relates to the arrangement which existed between Orlando and the Respondent.

CONCLUSION.

It is the conclusion of the Board that the evidence establishes that Respondent was guilty of misconduct in being a party to a transaction which caused Orlando to breach his duty to his employer, and that by reason of such practice the Respondent was guilty of misconduct as stated in the charge and violated Canon 29 and Canon 32 of the Canons of Professional Ethics.

CHARGE NO. 14.

It is charged that Respondent, through Michael Orlando, solicited the right to represent Amerzia Montgomery and his wife, Mildred Montgomery, in their claims on behalf of their minor daughter, Sheila, for injuries sustained by her on August 26, 1959.

The Panel appeared at Youngstown on July 19, 1963 to hear the evidence with respect to this charge, but a continuance was requested by counsel for the Relator for the reason that the two witnesses, Mildred and Amerzia Montgomery, did not appear although arrangements had been made for their appearance. Because the witnesses were residents of Pennsylvania, they had not been subpoenaed.

The deposition of Amerzia and Mildred Montgomery was taken by counsel for the Relator on July 26, 1963 at Newcastle, Pennsylvania, counsel for both the Relator and the Respondent, as well as the Respondent being present. In substance, both of these witnesses testified that they had seen Mr. Ruffalo and requested him to represent them and that thereafter Michael Orlando had come to their home and requested them to sign some pink paper which was an authorization to inspect traffic accident report at the police department. They denied that Orlando had first appeared at their home to solicit the case for Mr. Ruffalo.

Counsel for Relator cross-examined each of these witnesses whom Relator had called, concerning the contents of affidavits which they had signed. In neither of the affidavits was it stated that they had seen the Respondent before seeing Orlando. In fact, in the affidavit of Amerzia Montgomery it was clearly stated that Orlando had seen Mr. and Mr. Montgomery first about obtaining their child's case for Mr. Ruffalo. Neither of the witnesses gave any explanation as to the marked difference between their testimony at the deposition and the statements in their respective affidavits.

Counsel for the Relator offered the affidavits in evidence but these were objected to by counsel for the Respondent on the ground that the testimony of the witnesses given at the depositions could not be contradicted by the affidavits even though it was proper to cross-examine the witnesses with the aid of the affidavits because counsel for the Relator was taken by surprise. The objection to the introduction of the affidavits was sustained on the authority of *Hurley v. The State*, 46 O. S. 320, and *State v. Duffy*, 134 O. S. 16. Without the affidavits, there was no evidence to support the charge.

CONCLUSION.

It was the conclusion of the Panel that the evidence with respect to this charge fails to establish that Respondent was guilty of misconduct and the Board concurs in this conclusion.

RECOMMENDATION.

It is the recommendation of the Board of Commissioners on Grievances and Discipline that the Respondent be disbarred.